

## Memorandum 2023-3

**2022-2023 Annual Report (Staff Draft)**

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Attached to this memorandum is a staff draft of the Commission's 2022-2023 *Annual Report*.<sup>1</sup> With one exception, we have not reproduced the appendices to the Annual Report (i.e., we have omitted the text of the Commission's governing statute, its calendar of topics, the cumulative table of legislative action on Commission recommendations, the list of Commission publications, and any supplemental reports on revised Comments that have been approved). The staff will add these appendices in the final report.

The attached draft does include the appendix that contains Commissioner biographies. The Commission's general practice relating to the content of these biographies is to start with the biographical information in the Governor's press release announcing a Commissioner's appointment, and thereafter add updates modeled after that information, as needed. **Staff requests that Commissioners review this draft appendix, and advise if any content needs to be changed.**

Much of the content of the Annual Report is routine, and does not change significantly from year to year. Matters for which the staff requests special attention from Commissioners are noted below.

## ACTIVITIES OF COMMISSION MEMBERS AND STAFF

The Annual Report notes any outside activities of Commission members and staff relating to the Commission's work that were engaged in since approval of the previous Annual Report.<sup>2</sup> **Staff requests that Commissioners advise of any activities of this type<sup>3</sup> to report for this time period.**

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. The Commission's 2021-2022 Annual Report was approved on December 16, 2021.

3. See page 29 of the attached draft for an example of the type of activity usually reported.

EDITORIAL SUGGESTIONS

If Commissioners have any editorial suggestions relating to the draft Annual Report, please be sure to inform the staff.

CONCLUSION

**The Commission needs to decide whether to approve the attached draft report and appendix, with or without changes, for publication.**

Respectfully submitted,

Steve Cohen  
Staff Counsel

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

2022-2023 Annual Report

**STAFF DRAFT**

California Law Revision Commission  
c/o UC Davis School of Law  
Davis, CA 95616  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

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Comm'n Reports \_\_\_\_ (2022).

## SUMMARY OF WORK OF COMMISSION

### **Recommendations to the 2022 Legislature**

In 2022, legislation was approved to implement the following Commission recommendations:

- Disposition of Estate Without Administration: Liability of Transferee
- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551
- Hazardous Substance Account Recodification Act
- Hazardous Substance Account Recodification Act: Conforming Revisions
- California Public Records Act Clean-up: Conforming Revisions

### **2023 Legislative Program**

In 2023, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Statutes Made Obsolete by Trial Court Restructuring (Part 8)
- Stock Cooperatives and Revocable Transfer on Death Deeds
- State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena
- Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)

### **Commission Activities Planned for 2023**

During 2023, the Commission intends to work on the following major topics antitrust law, the Equal Rights Amendment and sex-

based discrimination, recodification of toxic substance statutes, and emergency-related reforms.

The Commission may work on other topics as time permits.

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2. Calendar of Topics Authorized for Study
3. Legislative Action on Commission Recommendations (Cumulative)
4. Report of the California Law Revision Commission on Chapter 28 of the Statutes of 2022 (Senate Bill 1380)
5. Report of the California Law Revision Commission on Chapter 29 of the Statutes of 2022 (Assembly Bill 1716)
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STATE OF CALIFORNIA

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**CALIFORNIA LAW REVISION COMMISSION**

c/o UC Davis School of Law  
Davis, CA 95616

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VICTOR KING  
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SENATOR RICHARD ROTH  
RICHARD SIMPSON

January 19, 2023

To: The Honorable Gavin Newsom  
Governor of California, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2022 and its plans for 2023.

In 2022, legislation implementing five Commission recommendations was enacted into law. The Commission expresses its gratitude to the following legislator and legislative committees for carrying the implementing legislation:

Assembly Member Brian Maienschein

- Disposition of Estate Without Administration: Liability of Transferee
- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551

Assembly Committee on Environmental Safety and Toxic Materials

- Hazardous Substance Account Recodification Act
- Hazardous Substance Account Recodification Act: Conforming Revisions

Senate Committee on Judiciary

- California Public Records Act Clean-Up: Conforming Revisions

The Commission held seven public meetings in 2022. Because of the COVID-19 pandemic, six of the meetings were conducted via teleconference, and one was conducted in a hybrid format that included both in-person and teleconference participation.

Respectfully submitted,

David A. Carrillo  
Chair

## 2022-2023 ANNUAL REPORT

### Introduction

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,<sup>1</sup> with responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:<sup>3</sup>

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized.<sup>4</sup>

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1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

3. For current membership, see "Personnel of Commission" *infra*.

4. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298. Additionally, a concurrent resolution or statute may directly confer authority to study a particular subject. See, e.g., 2022 Cal. Stat. ch. 462 [AB 2503] (landlord-tenant terminology); 2022 Cal. Stat. res. ch. 150 [SCR 92] (Equal Rights Amendment); 2022 Cal. Stat. res. ch. 147 [ACR 95] (revision of antitrust law); 2016 Cal. Stat. ch. 179 [AB 1779] and 2015 Cal. Stat. ch. 293 [AB 139] (revocable

The Commission has prepared 427 final recommendations with proposed reforms it sought to implement. Of those, 400 (more than 93%) have been enacted or otherwise implemented in whole or in substantial part.<sup>5</sup> Commission recommendations have resulted in the enactment of legislation affecting 26,700 sections of California law: 5,970 sections amended, 11,714 sections added, and 9,016 sections repealed.

The Commission's recommendations, reports, and other selected materials are regularly published in hardcover volumes. Most materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.<sup>6</sup>

#### **The COVID-19 Pandemic**

The Commission's work in 2022 continued to be significantly affected by the COVID-19 pandemic:

- Over the course of the year, the Commission's staff worked primarily from their homes, meeting approximately once per week for staff video conferences.
- The Commission conducted six of its seven public meetings via teleconference, and one in a hybrid format that included both in-person and teleconference participation.
- Within its existing subject matter authority, the Commission dedicated part of its resources to developing statutory reforms to address emergency conditions.

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transfer on death deeds); 2014 Cal. Stat. ch. 243 [SB 406] (standards for recognition of tribal and foreign court money judgments); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers); 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

6. See *Commission Publications*, Appendix 7 *infra*.

### **2023 Legislative Program**

In 2023, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Statutes Made Obsolete by Trial Court Restructuring (Part 8)
- Stock Cooperatives and Revocable Transfer on Death Deeds
- State and Local Agency Access to Electronic Communications: Notice of Administrative Subpoena
- Statutes Made Obsolete by Trial Court Restructuring (Part 9): Jurisdictional Classification of a Drug Asset Forfeiture Proceeding
- Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 3)

### **Commission Activities Planned for 2023**

During 2023, the Commission intends to work on the following major topics: antitrust law, the Equal Rights Amendment and sex-based discrimination, recodification of toxic substance statutes, and emergency-related reforms.

The Commission may work on other topics as time permits.

#### **Antitrust Law**

The Commission will study whether California antitrust law should be revised as directed in Assembly Concurrent Resolution 95 (2022).<sup>7</sup>

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7. See 2022 Cal. Stat. res. ch. 147.

**Equal Rights Amendment**

The Commission will study California law to identify and remedy defects related to discrimination and disparate impacts on the basis of sex, as directed in Senate Concurrent Resolution 92 (2022).<sup>8</sup>

**Recodification of Toxic Substance Statutes**

The Commission will continue to study the nonsubstantive revision of the Health and Safety Code relating to toxic substances.<sup>9</sup>

**Emergency-Related Reforms**

The Commission will continue to study whether the law should be revised to provide special rules that would apply to an area affected by a state of disaster or emergency declared by the federal government, by a state of emergency proclaimed by the Governor under Section 8625 of the Government Code, or by a local emergency proclaimed by a local governing body or official under Section 8630 of the Government Code.<sup>10</sup>

**Other Subjects**

The studies described above will dominate the Commission's time and resources during 2023. As time permits, the Commission may consider other subjects that are authorized for study.

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8. See 2022 Cal. Stat. res. ch. 150.

9. See 2021 Cal. Stat. res. ch. 108.

10. See 2021 Cal. Stat. res. ch. 108.

### **Calendar of Topics for Study**

The Commission's calendar of topics includes 14 topics that have been authorized by the Legislature for study.<sup>11</sup>

### **Function and Procedure of Commission**

The principal duties of the Commission are to:<sup>12</sup>

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>13</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>14</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.<sup>15</sup> However, the Commission may study and

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11. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

12. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

13. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 10271.

14. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

15. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set

recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>16</sup> Additionally, a concurrent resolution<sup>17</sup> or statute<sup>18</sup> may directly confer authority to study a particular subject.

### **Background Studies and Expert Consultants**

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant. Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services.

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forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

16. Gov't Code § 8298.

17. For examples of concurrent resolutions referring a specific topic to the Commission for study, see 2022 Cal. Stat. res. ch. 150 [SCR 92] (Equal Rights Amendment); 2022 Cal. Stat. res. ch. 147 [ACR 95] (revision of antitrust law); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers).

18. For example, Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Pursuant to Code of Civil Procedure Section 681.035, the Commission also has continuing authority to study enforcement of judgments.

Statutory authority may be uncodified. See, e.g., 2022 Cal. Stat. ch. 462 (landlord-tenant terminology); 2016 Cal. Stat. ch. 179 (revocable transfer on death deeds).

From time to time, the Commission requests expert assistance from law professors and other legal professionals, who may provide written input or testify at meetings.

### **Recommendations**

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.<sup>19</sup> When the Commission has reached a conclusion on the matter,<sup>20</sup> its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.<sup>21</sup>

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19. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Gaal, *Evidence Legislation in California*, 36 S.W.U. L. Rev. 561, 563-69 (2008); Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

20. Occasionally, one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

21. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence, IX. General Provisions*, 44 U.S.F. L. Rev. 891 (2010); Méndez, *California Evidence Code - Federal Rules of Evidence, VIII. Judicial Notice*, 44 U.S.F. L. Rev. 141 (2009); Méndez,

### Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.<sup>22</sup>

### Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and

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*California Evidence Code - Federal Rules of Evidence, VII. Relevance: Definition and Limitations*, 42 U.S.F. L. Rev. 329 (2007); Méndez, *California Evidence Code - Federal Rules of Evidence, VI. Authentication and the Best and Secondary Evidence Rules*, 41 U.S.F. L. Rev. 1 (2006); Méndez, *California Evidence Code - Federal Rules of Evidence, V. Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence*, 39 U.S.F. L. Rev. 455 (2005); Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence, IV. Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence*, 38 U.S.F. L. Rev. 139 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, I. Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, II. Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence, III. The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 1003 (2003).

For a list of background studies published in law reviews before 2003, see 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971).

22. Commission Comments are published by LexisNexis and Thomson Reuters in their print editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and LexisNexis.

Governor.<sup>23</sup> Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.<sup>24</sup>

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.<sup>25</sup> A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.<sup>26</sup>

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980s, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's

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23. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court* (1974) 12 Cal.3d 834, 847 n.18, 528 P.2d 45, 117 Cal.Rptr. 437 (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

24. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

25. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

26. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 542, 28 P.3d 151, 110 Cal.Rptr.2d 412, that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

intent in approving the bill.<sup>27</sup> If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.<sup>28</sup>

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.<sup>29</sup>

#### **Use of Commission Materials to Determine Legislative Intent**

Commission materials that have been placed before and considered by the Legislature are legislative history, are declarative of legislative intent,<sup>30</sup> and are entitled to great weight in construing

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27. See, e.g., *Baldwin v. State* (1972) 6 Cal.3d 424, 433, 491 P.2d 1121, 99 Cal.Rptr. 145. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno* (1973) 33 Cal.App.3d 877, 884, 109 Cal.Rptr. 421.

28. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

29. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal* (1984) 153 Cal.App.3d 117, 124, 200 Cal.Rptr. 341 (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

30. See, e.g., *Guardianship of Ann S.* (2009) 45 Cal.4th 1110, 1137 n.20, 202 P.3d 1089, 90 Cal.Rptr.3d 701 (Commission's official comments deemed to express Legislature's intent); *Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1132, 176 P.3d 654, 72 Cal.Rptr.3d 382 (official comments of California Law Revision Commission are declarative of intent not only of drafters of code but also of legislators who subsequently enacted it); *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 308 & n.6, 6 P.3d 713, 99 Cal.Rptr.2d 792 (Comments to reenacted statute reiterate clear understanding and intent of original enactment); *County of Los Angeles v. Superior Court* (1965) 62 Cal.2d 839, 843-44, 402 P.2d 868, 44 Cal.Rptr. 796 (statutes reflect policy recommended by Commission).

statutes.<sup>31</sup> The materials are a key interpretive aid for practitioners as well as courts,<sup>32</sup> and courts may judicially notice and rely on them.<sup>33</sup> Courts at all levels of the state<sup>34</sup> and federal<sup>35</sup> judicial

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31. See, e.g., *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 770, 288 P.3d 1237, 149 Cal.Rptr.3d 614 (“Comments of a commission that proposed a statute are entitled to substantial weight in construing the statute, especially when, as here, the Legislature adopted the statute without change.”); *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 947, 111 P.3d 954, 28 Cal.Rptr.3d 685 (Commission report entitled to substantial weight in construing statute); *Utility Consumers’ Action Network, Inc. v. AT&T Broadband of Southern Cal., Inc.* (2006) 135 Cal.App.4th 1023, 1029, 37 Cal.Rptr.3d 827 (Commission recommendation enacted without change is entitled to substantial weight when interpreting statutory provision); *Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927, 103 Cal.Rptr.2d 773:

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8 [276 Cal.Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 535, fn. 7 [260 Cal.Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10 [17 Cal.Rptr.2d 340].)

32. Cf. 11 B. Witkin, *Summary of California Law Constitutional Law* § 138(d) (2020) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

33. See, e.g., *Lang v. Roché* (2011) 201 Cal.App.4th 254, 263 n.8, 133 Cal.Rptr.3d 675; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 34 Cal.Rptr.3d 520 (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale v. Southern California IPA Medical Group, Inc.* (2001) 86 Cal.App.4th 919, 927, 103 Cal.Rptr.2d 773; *Barkley v. City of Blue Lake* (1993) 18 Cal.App.4th 1745, 1751 n.3, 23 Cal.Rptr.2d 315.

34. See, e.g., *Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 298, 935 P.2d 781, 63 Cal.Rptr.2d 74 (California Supreme Court); *Branches Neighborhood Corp. v. CalAtlantic Group, Inc.* (2018) 26 Cal.App.5th 743, 754, n.5, 237 Cal.Rptr.3d 411 (court of appeal); *Rossetto v. Barross* (2001) 90 Cal.App.4th Supp. 1, 110 Cal.Rptr.2d 255 (appellate division of superior court).

35. See, e.g., *California v. Green* (1970) 399 U.S. 149, 154 n.3 (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)* (9th Cir. 1997) 120 F.3d 950, 953 (federal court of appeals); *Mortgage Electronic Registration Systems v. Robinson* (C.D. Cal. 2014) 45 F.Supp.3d 1207, 1210 (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)* (B.A.P. 9th Cir.

systems depend on Commission materials to construe statutes enacted on Commission recommendation. Appellate courts have cited Commission materials in more than a thousand published opinions.<sup>36</sup>

Commission materials have been used as direct support for a court's interpretation of a statute,<sup>37</sup> as one of several indicia of legislative intent,<sup>38</sup> to explain the public policy behind a statute,<sup>39</sup> and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.<sup>40</sup> The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.<sup>41</sup>

Commission materials are entitled to great weight, but they are not conclusive.<sup>42</sup> While the Commission endeavors in Comments to

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1996) 204 B.R. 976, 978-79 (bankruptcy appellate panel); *In re 3 MB, LLC* (Bankr. E.D. Cal. 2019) 609 B.R. 841, 851-52 (bankruptcy court).

36. It should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento* (E.D. Cal. 2002) 185 F.Supp.2d 1128, 1132 (Law Revision "Committee"); *Ryan v. Garcia* (1994) 27 Cal.App.4th 1006, 1010 n.2, 33 Cal.Rptr.2d 158 (Law "Review" Commission).

37. See, e.g., *People v. Ainsworth* (1988) 45 Cal.3d 984, 1015, 755 P.2d 1017, 248 Cal.Rptr. 568.

38. See, e.g., *Heieck & Moran v. City of Modesto* (1966) 64 Cal.2d 229, 233 n.3, 411 P.2d 105, 49 Cal.Rptr. 377.

39. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n* (1990) 50 Cal.3d 31, 38 n.8, 784 P.2d 1373, 265 Cal.Rptr. 801; *Altizer v. Highsmith* (2020) 52 Cal.App.5th 331, 338, 265 Cal.Rptr.3d 832.

40. See, e.g., *In re Pikush* (B.A.P. 9th Cir. 1993) 157 B.R. 155, 157-58 (Commission's recommendation "[n]owhere" suggests that statutory revisions would create new exemption for annuities, thus Legislature did not create such exemption when it made those revisions); *State ex rel. State Pub. Works Bd. v. Stevenson* (1970) 5 Cal.App.3d 60, 64-65, 84 Cal.Rptr. 742 (Legislature had no intention of changing existing law where "not a word" in Commission's reports indicated intent to abolish or emasculate well-settled rule).

41. See, e.g., *McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613, 623-24, 300 P.3d 886, 155 Cal.Rptr.3d 817; *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 935-36, 496 P.2d 480, 101 Cal.Rptr. 568.

42. See, e.g., *Wilson v. County of San Joaquin* (2019) 38 Cal.App.5th 1, 11, 250 Cal.Rptr.3d 56; *Redevelopment Agency v. Metropolitan Theatres Corp.* (1989) 215 Cal.App.3d 808, 812, 263 Cal.Rptr. 637 (Comment does not override

explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,<sup>43</sup> nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>44</sup> Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>45</sup>

Some types of Commission materials are not properly relied on as evidence of legislative intent. On occasion, courts have cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.<sup>46</sup> While these materials

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clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph* (1998) 17 Cal.4th 203, 216, 949 P.2d 472, 70 Cal.Rptr.2d 619. The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove* (1994) 30 Cal.App.4th 766, 774, 36 Cal.Rptr.2d 144; *In re Thomas* (Bankr. E.D. Cal. 1989) 102 B.R. 199, 202.

43. Cf. *People v. Coleman* (1970) 8 Cal.App.3d 722, 731, 87 Cal.Rptr. 554 (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

44. See, e.g., *Arellano v. Moreno* (1973) 33 Cal.App.3d 877, 885, 109 Cal.Rptr. 421 (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

45. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court* (1971) 6 Cal.3d 150, 158-59, 491 P.2d 1, 98 Cal.Rptr. 649. For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

46. See, e.g., *Rojas v. Superior Court* (2005) 33 Cal.4th 407, 93 P.3d 260, 15 Cal.Rptr.3d 643 (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-13, 960 P.2d 1031, 78 Cal.Rptr.2d 1 (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer* (1987) 193 Cal.App.3d 238, 243, 239 Cal.Rptr. 137. In that event, reliance on the tentative recommendation is proper.

may be indicative of the Commission's intent in proposing the legislation, only the Legislature's intent in adopting the legislation is entitled to weight in construing the statute.<sup>47</sup> Unless preliminary Commission materials were before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.<sup>48</sup>

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.<sup>49</sup> However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.<sup>50</sup>

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See also *Ilkhchooyi v. Best* (1995) 37 Cal.App.4th 395, 406, 45 Cal.Rptr.2d 766 (letter responding to tentative recommendation); D. Henke, California Legal Research Handbook § 3.51 (1971) (background studies).

47. Cf. *Rittenhouse v. Superior Court* (1991) 235 Cal.App.3d 1584, 1589, 1 Cal.Rptr.2d 595 (linking Commission's intent and Legislature's intent); *Guthman v. Moss* (1984) 150 Cal.App.3d 501, 508, 198 Cal.Rptr. 54 (determination of Commission's intent used to infer Legislature's intent).

48. The Commission concurs with the opinion of the court in *Juran v. Epstein* (1994) 23 Cal.App.4th 882, 894 n.5, 28 Cal.Rptr.2d 588, that staff memoranda to the Commission should generally not be considered as legislative history.

49. See, e.g., *Duarte v. Chino Community Hosp.* (1999) 72 Cal.App.4th 849, 856 n.3, 85 Cal.Rptr.2d 521.

50. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n* (1999) 21 Cal.4th 489, 502-03, 981 P.2d 543, 87 Cal.Rptr.2d 702 (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall* (1990) 222 Cal.App.3d 578, 585, 271 Cal.Rptr. 773 (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court* (1979) 100 Cal.App.3d 303, 309-10, 160 Cal.Rptr. 862 (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo* (1975) 50 Cal.App.3d 401, 407 n.4, 123 Cal.Rptr. 669 (court indebted to many studies of Commission for analytical materials).

### **Publications**

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.<sup>51</sup> Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, law libraries, and other individuals requesting materials.

The Commission's reports, recommendations, and studies are published in hardcover volumes that serve as a permanent record of the Commission's work and are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.<sup>52</sup> Publications that are out of print are available as electronic files.<sup>53</sup>

### **Electronic Publication and Internet Access**

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.<sup>54</sup> Interested persons with Internet access can find the current agenda, meeting minutes, background studies, tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. They can be downloaded from the Commission's website.

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51. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

52. See *Commission Publications*, Appendix 8 *infra*.

53. See "Electronic Publication and Internet Access" *infra*.

54. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

**Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes the majority of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

**MCLE Credit**

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet<sup>55</sup> or may be purchased in advance from the Commission.

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55. See “Electronic Publication and Internet Access” *supra*.

### Personnel of Commission<sup>56</sup>

As of December 31, 2022, the following persons were members of the Law Revision Commission:

#### Legislative Members<sup>57</sup>

Assembly Member Ash Kalra  
 Senator Richard Roth

#### Legislative Counsel<sup>58</sup>

Cara Jenkins

#### Members Appointed by Governor<sup>59</sup>

	<i>Term Expires</i>
David Carrillo, Berkeley <i>Chair</i>	October 1, 2023
Amb. (r.) David Huebner, Palm Springs <i>Vice-Chair</i>	October 1, 2025
Xochitl Carrion, San Francisco	October 1, 2025
Ana Cubas, Los Angeles	October 1, 2025
Victor King, La Crescenta	October 1, 2023
Jane McAllister, Hilmar	October 1, 2023
Richard Simpson, Sacramento	October 1, 2023

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56. See also *Biographies of 2022 Commissioners*, Appendix 6 *infra*.

57. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

58. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

59. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

The following persons are on the Commission's staff:<sup>60</sup>

*Legal*

BRIAN HEBERT  
Executive Director

KRISTIN BURFORD  
Staff Counsel

STEVE COHEN  
Staff Counsel

*Administrative*

DEBORA LARRABEE  
Chief of Administrative Services

MEGAN HAYENGA  
Office Technician

On May 20, 2022, the Commission's Chief Deputy Director Barbara Gaal retired after nearly three decades on the Commission's staff. On February 17, 2022, in recognition of her upcoming retirement, the Commission and its staff presented Ms. Gaal with a Senate Resolution recognizing her achievements, character, and service to the People of California, which read as follows:

Whereas, Barbara Sandra Gaal, Chief Deputy Director of the California Law Revision Commission, has distinguished herself in nearly three decades of service to the Commission, the California State Legislature, and the People of California; and

Whereas, Barbara Gaal has played a leading role in the development of numerous statutory reforms to improve the clarity, fairness, and effectiveness of California law; and

Whereas, Barbara Gaal's work has included the development of thousands of code revisions that were necessary to correctly implement tectonic changes to California's trial court system in the 1990s, including the elimination of municipal and justice courts and the shift from county funding of the trial courts and employment of

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60. The Commission also employs three attorneys who work exclusively for the Committee on Revision of the Penal Code, Thomas Nosewicz, Joy Haviland, and Richard Owen.

court personnel, to a system of state funding and employment; and

Whereas, Barbara Gaal is responsible for significant improvements to the law that governs trial practice in California, including reform of the hearsay rule, the Best Evidence Rule, the waiver of privilege, and the confidentiality of mediation communications; and

Whereas, Barbara Gaal prepared successful recodifications of the Deadly Weapons provisions of the Penal Code, the California Public Records Act, and the Civil Discovery Law, greatly improving the accessibility, user-friendliness, and future maintenance of those important bodies of law; and

Whereas, Barbara Gaal led the successful effort to enact California's adaptation of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, a statute that will reduce the difficulty and cost of caring for a dependent adult when that care involves multiple jurisdictions; and

Whereas, Barbara Gaal has been a critical member of the management team of the California Law Revision Commission, helping to steer the agency through repeated state fiscal crises, the creation of an entirely new law reform body (the Committee on Revision of the Penal Code) and a once-in-a-lifetime global health crisis; and

Whereas, Barbara Gaal's thorough professionalism, keen intellect, fairness, decency, and warm collegiality have earned the respect and admiration of those who have had the good fortune to work with her, including numerous members and staff of the California State Legislature; now, therefore, be it

*Resolved*, by Senator Robert M. Hertzberg, that he takes great pleasure in extending to Barbara Sandra Gaal all due recognition for her many great accomplishments and for exemplifying the character and competence that mark the best of those who serve the People of California, and to convey appreciation for the great contributions she has

made to the California State Legislature and the administration of justice.

### **Committee on Revision of the Penal Code**

On January 1, 2020, the Committee on Revision of the Penal Code was formed as a part of the California Law Revision Commission.<sup>61</sup>

The Commission provides staffing for that new function, but the membership, authority, and deliberative processes of the two bodies are separate and non-overlapping.<sup>62</sup>

The Committee describes its activities and recommendations in a separate Annual Report.<sup>63</sup> They are not reported here.

### **Commission Budget**

The Commission's operations for the 2022-23 fiscal year, including the operations of the Committee on Revision of the Penal Code, have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$2,796,000.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, LexisNexis, and Thomson Reuters. In addition, the Commission receives some benchbooks from the California Center for Judicial Education and Research (CJER). The Commission also receives a copy of the McGeorge Law Review, annually. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the law libraries at the University of California, Davis, School of Law and at Stanford Law School. The Commission is grateful for these contributions.

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61. Gov't Code § 8280(b).

62. Gov't Code §§ 8281 (Commission membership), 8281.5 (Committee membership), 8289 (Commission duties), 8290.5 (Committee duties and authority), 8293(a) (Commission authority).

63. Gov't Code § 8293(b).

### **Other Activities**

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.<sup>64</sup>

#### **National Conference of Commissioners on Uniform State Laws**

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.<sup>65</sup> Legislative Counsel and Commission member Cara Jenkins is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

#### **Other Commissioner and Staff Activities**

On February 23, 2022, Chief Deputy Director Barbara Gaal gave a presentation about the Commission to an advanced legislative process class at UC Hastings College of the Law, taught by former Commissioner and Legislative Counsel Diane Boyer-Vine.

On April 8, 2022, Ms. Gaal gave a presentation about the Commission's recodification of the California Public Records Act to the Public Law Section of the California Lawyers Association.

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64. Gov't Code § 8296.

65. Gov't Code § 8289.

### **Legislative History of Recommendations in the 2022 Legislative Session**

In 2022, four bills to effectuate five Commission recommendations were introduced. All four bills were enacted.

#### **California Public Records Act Clean-up: Conforming Revisions**

Senate Bill 1380 (2022 Cal. Stat. ch. 28) was introduced in 2022 by the Senate Committee on Judiciary. The bill effectuated a part of the Commission's recommendation on *California Public Records Act Clean-up: Conforming Revisions*, 46 Cal. L. Revision Comm'n Reports 563 (2019) that was not enacted in 2021 by Assembly Bill 474 (2021 Cal. Stat. ch. 615).

The measure was enacted, with amendments. See also *Report of the California Law Revision Commission on Chapter 28 of the Statutes of 2022 (Senate Bill 380)* (Appendix 4, *infra*).

#### **Disposition of Estate Without Administration: Liability of Transferee**

#### **Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551**

Assembly Bill 1716 (2022 Cal. Stat. ch. 29) was introduced in 2022 by Assembly Member Brian Maienschein. The bill effectuated two Commission's recommendations, *Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551*, 46 Cal. L. Revision Comm'n Reports 11 (2019) and *Disposition of Estate Without Administration: Liability of Transferee*, 47 Cal. L. Revision Comm'n Reports 1 (2020).

The measure was enacted, with amendments. See also *Report of the California Law Revision Commission on Chapter 29 of the Statutes of 2022 (Assembly Bill 1716)* (Appendix 5, *infra*).

#### **Hazardous Substance Account Recodification Act**

Assembly Bill 2293 (2022 Cal. Stat. ch. 257) was introduced in 2022 by the Assembly Committee on Environmental Safety and Toxic Materials. The bill effectuated the Commission's

recommendation on *Hazardous Substance Account Recodification Act*, 48 Cal. L. Revision Comm'n Reports 1 (2021).

The measure was enacted, with amendments.

**Hazardous Substance Account Recodification Act: Conforming Revisions**

Assembly Bill 2327 (2022 Cal. Stat. ch. 258) was introduced in 2022 by the Assembly Committee on Environmental Safety and Toxic Materials. The bill effectuated the Commission's recommendation on *Hazardous Substance Account Recodification Act: Conforming Revisions*, 48 Cal. L. Revision Comm'n Reports \_\_\_ (2021).

The measure was enacted, with amendments.

**Report on Statutes Repealed by Implication  
or Held Unconstitutional**

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared,<sup>66</sup> and has the following to report:

- No decision of the United States Supreme Court or of the California Supreme Court repealing a California statute by implication has been found.
- One decision of the United States Supreme Court appearing to have held a California statute

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66. The study in the Commission's last Annual Report was carried through opinions published on or before December 8, 2021. This study has been carried through opinions published on or before December 31, 2022.

unconstitutional has been found.<sup>67</sup>

- No decision of the California Supreme Court holding a California statute unconstitutional has been found.

### Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.<sup>68</sup>

Pursuant to the mandate imposed by Government Code Section 8290, the Commission further recommends the repeal of the provisions referred to under “Report on Statutes Repealed by Implication or Held Unconstitutional,” supra, to the extent they have been held unconstitutional, and have not been amended, reformed, or repealed.

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67. In *New York State Rifle & Pistol Association, Inc. v. Bruen* (June 23, 2022) \_\_\_ U.S. \_\_\_, 142 S.Ct. 2111, the United States Supreme Court held that a provision in Section 400.00(2)(f) of the New York Penal Law, requiring an applicant to show “proper cause” for a license to have and carry concealed on the person a pistol or revolver, violated the Second and Fourteenth Amendments of the United States Constitution.

Although the Court in *Bruen* did not specifically rule on the constitutionality of any provision of any state other than New York, the court identified California as one of the six other states that contain an “analog” of this “proper cause” standard in its statutory licensing scheme. This analog appears in Penal Code Section 26150(a)(2), which is specifically cited in a footnote in *Bruen*, as well as in Penal Code Section 26155(a)(2), both of which require an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person to show “good cause” for the granting of that license.

The day after the *Bruen* opinion was issued, the California Attorney General’s office issued a “Legal Alert” to law enforcement officers throughout the state, advising that based on the *Bruen* opinion, “the Attorney General considered the good cause requirement set forth in Penal Code Sections 26150(a)(2) and 26155(a)(2) to be unconstitutional.” See Office of the Attorney General, *Legal Alert: U.S. Supreme Court Decision in New York State Rifle & Pistol Association v. Bruen, No. 20-843* (June 24, 2022), <https://oag.ca.gov/system/files/media/legal-alert-oag-2022-02.pdf>.

68. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

## APPENDIX 6

### BIOGRAPHIES OF 2022 COMMISSIONERS

David A. Carrillo, of Berkeley, presently serves as Chair of the Commission. He has been executive director and lecturer in residence at the California Constitution Center, University of California, Berkeley School of Law since 2012. He was previously a deputy attorney general for the California Department of Justice from 2001 to 2003 and from 2007 to 2012, a deputy city attorney for the City of San Francisco from 2003 to 2007, a senior litigation associate for Seyfarth Shaw from 1999 to 2000, a litigation associate for Nossaman LLP in 1999, and a deputy district attorney for Contra Costa County from 1995 to 1998. Commissioner Carrillo received a Juris Doctor degree, a Master of Laws degree, and a Doctor of the Science of Jurisprudence degree from the University of California, Berkeley School of Law.

David Huebner, of Palm Springs, presently serves as Vice-Chair of the Commission. He has been an arbitrator and mediator affiliated with JAMS since 2017. He was previously a partner at Arnold & Porter from 2014 to 2016, the U.S. Ambassador to New Zealand and the Independent State of Samoa from 2009 to 2014, a partner at Sheppard Mullin Richter & Hampton LLP from 2005 to 2009, an adjunct professor at the University of Southern California Gould School of Law from 1999 to 2007, and a partner at Coudert Brothers from 1992 to 2005, where he also served as Chair and CEO. Huebner received a Juris Doctor degree from Yale Law School.

Xochitl Carrion, of San Francisco, has been lead attorney at the ALTO Alliance LLC since 2022. She was previously a staff attorney at the ALTO Alliance LLC from 2021 to 2022, an Assistant District Attorney at the San Francisco District Attorney's Office from 2015 to 2021, and an associate at Goldfarb & Lipman LLC from 2007 to 2015. Commissioner Carrion received a Juris Doctor degree from the University of California, Hastings College of the Law.

Ana Cubas, of Los Angeles, has been an adjunct professor with the Los Angeles Community College District since 2017. She was previously government affairs manager at Vanir Construction Management from 2016 to 2017, and chief of staff for District 14 of the City of Los Angeles from 2009 to 2012. She is a member of the United States Green Building Council and the California Hispanic Chambers of Commerce. Commissioner Cubas received a Master of Arts degree in Public Affairs and Urban/Regional Planning from Princeton University, and a Master of Business Administration degree from the University of Southern California.

Cara Jenkins, of Sacramento, was appointed Legislative Counsel for the State of California on December 7, 2020. She was previously a deputy in the Legislative Counsel's office from 2010 to 2020, an associate at a private law firm in Sacramento, an intern at the Sacramento City Attorney's office and the California Department of Justice, and a manager in corporate communications at DST Output. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Jenkins received a Juris Doctor degree from the University of the Pacific, McGeorge School of Law.

Assembly Member Ash Kalra, of San Jose, has been a member of the Assembly since 2016. He was previously a Deputy Public Defender for Santa Clara County from 2004 to 2015, and served on the San Jose City Council for eight years. Commissioner Kalra received a Juris Doctor degree from Georgetown University.

Victor King, of La Crescenta, has been university legal counsel for California State University, Los Angeles since 2002. He was previously a partner with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 2001 to 2002, an associate with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 1999 to 2001, an associate with the law firm of Bottum and Felton from 1996 to 1999, and an associate with the law firm of Ochoa and Sillas from 1991 to 1995. He was also a trustee of the Glendale Community College District from 1997 to 2009. Commissioner King received a Juris Doctor degree from the University of Michigan Law School.

Jane McAllister, of Hilmar, has been a partner with McAllister and McAllister, Inc. since 1996. She was previously an associate attorney with Damrell, Nelson, Schrimp, Pallios, Pacher, and Silva from 1988 to 1996. She has also served as a court-ordered arbitrator for Merced County, and is a member of the Stanislaus County Estate Planning Council. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law.

Senator Richard Roth, of Riverside, has been a member of the Senate since 2012. He previously was a managing partner in the law firm of Roth Carney APC, engaged in the practice of labor and employment law with other Riverside-based firms for over 30 years, was an attorney with the National Labor Relations Board, an adjunct instructor at the University of California at Riverside's Anderson School of Management and in the University's extension division, a Legal Advisor to the Airlift/Tanker Association, and a Lawyer Representative to the Ninth Circuit Court of Appeals Judicial Conference. He has also served in the United States Air Force, and was a member of the JAG Corps, including service in the Pentagon as Mobilization Assistant to the Judge Advocate General of the U.S. Air Force, retiring with the rank of major general. He has also previously served as Chairman of the Board for the Greater Riverside Chambers of Commerce, president of the Monday Morning Group, vice-chairperson of the Parkview Community Hospital Board, and trustee of the March Field Museum. He is a member of the Raincross Club, the Riverside Community Hospital Advisory Board, the Thomas W. Wathen Foundation Board (Flabob Airport), the Riverside County Bar Association Board of Directors, the Path of Life Ministries Advisory Board, the Air Force Judge Advocate General's School Foundation Board, and the La Sierra University Foundation Board, and a past member of the Riverside Public Library Foundation Board, and the Riverside Art Museum Board. Commissioner Roth received a Juris Doctor degree from Emory University.

Richard Simpson, of Sacramento, was chief of staff for the Office of Senator Hertzberg in 2019, and was previously deputy chief of staff and education advisor for the Office of the Assembly

Speaker from 1999 to 2016, legislative secretary for the Office of Governor Gray Davis from 1998 to 1999, deputy chief of staff for the Office of Assembly Speaker Villaraigosa in 1998, a legislative advocate for the California Teachers Association from 1996 to 1998, staff director for the Senate Education Committee from 1995 to 1996, and education advisor for the Office of the Assembly Speaker Willie Brown, Jr. from 1991 to 1994. He is a member of the Commission on Judicial Performance, and served as a member of the Sacramento Board of Education from 1990 to 2002. Commissioner Simpson received a Master of Public Policy degree from the University of California, Berkeley.

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